



Federal Communications Commission
Washington, D.C. 20554

December 7, 2012

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Arlington, VA 2209

Re: Request for Waiver

Dear Mr. Gurss:

On December 22, 2011, the State of Maine (Maine) sought a waiver,¹ until December 31, 2013, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands to operate using channel bandwidth of no more than 12.5 kilohertz or equivalent efficiency by January 1, 2013.² Specifically, Maine seeks a one-year waiver to allow it to deploy a new digital, trunked VHF radio and digital microwave interconnect system to replace a multiplicity of aging analog radio, microwave and UHF interconnect systems that currently serve the State's public safety agencies and related services.³ By this letter, we grant Maine's request.

Maine contends that its current radio systems are outdated, difficult to maintain, and no longer adequate to serve their respective departments' critical needs.⁴ These two-way radio systems, with a total of more than 5,400 mobile and portable radios, are now four to five generations-obsolete, suffer from an increased number of outages, with certain critical spare parts available almost exclusively through online auctions. According to Maine virtually all of these radios also need to be replaced to meet the Commission's narrowbanding requirement.⁵ The average age of system infrastructure on these networks is twenty-six years.⁶

The State is now deploying a new fully-funded state-wide radio system that will consolidate all of its current VHF high-band radio systems into a new narrowband-compliant VHF, Project 25-digital, trunked radio system. A System Design Report was completed in August 2006, which was followed by a

¹ See Request for Waiver, filed December 22, 2011 (Waiver Request).

² See 47 C.F.R. § 90.209(b)(5); *see also* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Order*, WT Docket No. 99-87, RM-9332, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012).

³ Waiver Request at 1.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

design and construction Request for Proposal (RFP) in January 2007, for what became known as “MSCommNet” (Maine State Communications Network). Following two cycles of competitive bids, Maine awarded a design and construction contract to Harris Corporation in May 2009.⁷

Although the new system contemplates full use of the VHF Public Safety Pool, including channels already assigned to the State, Maine notes that the number of available Public Safety Pool channels to accommodate the channels needed for the new radio system is not sufficient.⁸ Therefore, the State is seeking to complete the system by using Federal, Industrial Land Transportation and Railroad channels.⁹ The delay in receiving authorization for these non-Public Safety channels however has forced the project timeline to slip and thus the State requires a one-year waiver of the deadline to allow it to construct their system.¹⁰

Maine contends that it lacks any reasonable alternatives. Even if it replaced its mobile/portable units with narrowband-capable equipment prior to January 1, 2013, the State contends that it would not be able to convert a substantial number of its existing analog conventional base stations to narrowband operation. The State also asserts that it is unable to deploy new digital, trunked base stations until additional channels are assigned to it that would enable the State to accommodate the new state-wide channel plan to support trunked operation at most sites. Although the new digital trunked base stations are capable of being operated in analog conventional mode, the State points out that the resulting problem of cutover from an analog narrowband system to the final digital trunked system using exactly the same hardware would be unduly burdensome and expensive.¹¹

To obtain a waiver of the Commission’s rules a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest or the applicant has no reasonable alternative.¹³ Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology, that narrowbanding waiver requests “will be subject to a high level of scrutiny” under the waiver standard.¹⁴ We have also provided recommended guidance on the factors that licensees should address in their requests and have recommended that in addressing these

⁷ *Id.* at 4-5.

⁸ *Id.* at 5-6.

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7-8

¹¹ *Id.* at 8.

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁴ Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline for Transition to Narrowband Operations in the 150-174 MHz and 421-512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters, *Public Notice*, 26 FCC Rcd 9647 (2011) (*Narrowbanding Waiver Guidance Notice*); see also Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Provide Supplemental Guidance for Licensees in the 150-174 and 421-512 MHz Bands Seeking Waivers of the January 1, 2013 Narrowbanding Deadline, *Public Notice*, 27 FCC Rcd 1936 (WTB/PSHSB 2012).

factors, licensees should seek to demonstrate that “(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process.”¹⁵

Based on the record before us, we find Maine’s request warrants waiver relief because it has demonstrated that the underlying purpose of the narrowbanding rule—to promote spectrum efficiency and increase available capacity— would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest.¹⁶ In reaching this conclusion, we place significant weight on the State’s showing with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*. The State has also shown good faith and diligence in planning its narrowband transition, and it has invested substantial resources in meeting the Commission’s deadline. Given the progress the State has made in implementing MSCommNet, we also find that strict application of the narrowbanding rules in this instance would be detrimental to the State’s public safety communications response capabilities and therefore would be contrary to the public interest. Finally, we conclude that the State’s request for a twelve-month waiver period serves the public interest because it is no more than is reasonably necessary to complete narrowbanding.¹⁷

Therefore, we grant Maine’s request for waiver of the Commission’s January 1, 2013 VHF/UHF narrowbanding deadline, until December 31, 2013, for the call signs and frequencies set forth in the Appendix below.

Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3)(i) of the Commission’s rules, 47 C.F.R. § 1.925(b)(3)(i), that the Request for Waiver filed on December 11, 2011 by the state of Maine IS GRANTED.

This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION



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¹⁵ *Narrowbanding Waiver Guidance Notice* at 9649.

¹⁶ See 47 C.F.R. § 1.925(b)(3)(i).

¹⁷ See *id.*

Appendix A: Affected Call Signs

State of Maine Department of Transportation VHF High-Band Licenses (FRN: 0003673738)

KA97555	KEF782	KK6064	KNNJ474	KQU653	KRT896	KW4480
KXA528	KXA532	KXA537	KZ6292	WAB915	WHX824	WPDG245
WPJS571	WPJS585	WPKI827	WPQC291	WPUF976	WPXA211	WPYT774
WPZZ269	WQB861	WQBD595	WQBD618	WQBE824	WQBG887	WQBL534
WQBN228	WQBY471	WQCB890	WQCE483	WQDF928		

State of Maine Office of Information Technology (OIT) VHF High-Band Licenses (FRN: 0004041992)

KBZ739	KCA675	KCF35	KCH381	KCH382	KCH383	KCH384
KCH385	KCH386	KCH387	KCH388	KCH389	KCH390	KCH391
KCH392	KCH393	KCH395	KCH396	KCH397	KDD409	KDD417
KDD418	KDD419	KDR610	KDU919	KDU927	KDU929	KDU935
KDU973	KFP499	KIT650	KJY731	KMK697	KNAQ863	KNAR501
KNCE957	KNCH462	KNDK587	KNDR549	KNED297	KNGK757	KNHJ209
KNHL983	KNHR791	KNHS537	KNHS538	KNHS539	KNHS540	KNIB683
KNJC739	KNNJ955	KQW320	KT6572	KT6573	KT9124	KUZ798
KXA540	KYF299	WNAV318	WNCH558	WNFK780	WNIL743	WNJB204
WNKG207	WNLK634	WNMZ459	WNPI572	WNQZ794	WNQZ795	WNRE219
WNRW929	WNST582	WNST794	WNST843	WNST873	WNST885	WNSU512
WNSU513	WNSU514	WNSU518	WNUA999	WNUF299	WNUK670	WNUM496
WNYD499	WPBW697	WPBW700	WPBZ577	WPDC203	WPDC204	WPDC206
WPDD755	WPDD756	WPDZ669	WPGG486	WPHR353	WPKJ585	WPKK474
WPKT653	WPLX244	WPMY425	WPPG497	WPSN394	WPUS947	WPUW285
WPVB878	WPZD918	WQCU503	WQCW848	WQCW856	WQCX423	WQCX566
WQCX568	WQCY778	WQDI311	WQEG794	WQEQ234	WQFV387	WQGM751
WQHE660	WQHE748	WQHG574	WQHK801	WQHM524	WQHN246	WQHS736
WHQU520	WQHX346	WQID590	WQIF289	WQIF293	WQJA893	WQJF436
WQJF447	WQJJ777	WQJM530	WQJM546	WQJN403	WQJN505	WQJR760
WQJS952	WQJX761	WQJZ677	WQKE734	WQKG756	WQKI224	WQKM251
WRW312	WSL538	WSL743	WYR817	WYU815	WZT823	WZX380
WZX719						

Table 3 – State of Maine Office of Information Technology (OIT) UHF Link Licenses (FRN: 0004041992)

WNKJ361	WPDZ669	WPIT493	WPIT493	WPIW273	WPKX909	WPQY221
WPTB420	WQHE748	WQHG574	WQHK801	WHQU520	WQHX346	WQID590
WQIF289	WQIF293					